



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,256	12/02/2003	John McDonald	FCMCCG.002DV1	3528

20995 7590 07/15/2009
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

ACKUN, JACOB K

ART UNIT	PAPER NUMBER
----------	--------------

3728

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

07/15/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary	Application No. 10/726,256	Applicant(s) MCDONALD ET AL.	
	Examiner Jacob K. Ackun Jr.	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-41, 43-46 and 74-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36, 38-41 and 45 is/are allowed.
- 6) ☒ Claim(s) 33-35, 37, 43-44, 46 and 74-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claims 36 and 45 are objected to because of the following informalities: In claim 36, in the fifth line from the bottom, the second “the” should be changed to “a” (or other appropriate correction made), to clarify which of the two side edges is being referred to (note the seventh line from the bottom). Appropriate correction is required. In claim 45 the language added to the claim appears to have been added in a location that is inappropriate. For example what should be the antecedent for the “peripheral extending structures” appears to be lower down in the claim instead of higher up. Also “peripheral” should be “peripherally”.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 33-35, 37, 43-44 and 46 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations now added to the last 5 lines of claim 33 are without support in the Disclosure as filed, and thus constitute New Matter.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 33-35, 37, 43-44, 46 and 74-86 are finally rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith (6,311,843) or Ridgeway (5,388,701). Note the comments in the last office action.

6. Claims 74-86 are finally rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jones (5,676,245) alone, or Lofgren et al. (5,669,506) in view of Jones. The changes to the last two lines of claim 74 have been noted. It may also be noted by applicant that the “configured to be assembled” language requires nothing more than the ability to be so assembled, per longstanding examination practice at the PTO. Thus the claim reads on a plurality of the devices of Jones since they are at least inherently capable of placement one on top of the other with some article therebetween, at the option of a user thereof. No article is claimed, and therefore, as applicant is no doubt aware, no article need be shown. The functional language of claim 74 referred to above requires no more than the capability to perform the function, which as noted above, Jones has. Moreover, it would have been obvious under section 103 of the Statute to stack the assemblies of Jones (such as in a box), and to

place some article such as a separator between two assemblies, for the purpose of facilitating the transportation of multiple products packaged in the Jones assemblies.

Additionally, Lofgren discloses most of the elements of the claims but does not disclose that the hammock can comprise a sleeve surrounding the frame member. Like other prior art in the specific field, Jones clearly teaches that the concept is prior art. Therefore, it would have been obvious in view of Jones to construct product retaining hammocks such as that in Lofgren from a sleeve that surrounds the hammock, for the purpose of facilitating easier package construction and facilitating the accommodation of products of varying sizes.

7. Applicant's arguments filed 4/16/09 have been fully considered but they are not persuasive as to the claims remaining under rejection. With regard to the rejection of claim 33 over Ridgeway the New Matter rejection should be noted. Moreover, and in any event, at least column 4 paragraph 3 of Ridgeway clearly indicates that while the frames **can** have different dimensions, they do not have to. As to the rejection of claim 74 over Ridgeway, the use of a sleeve instead of a flat sheet to form product retaining hammocks, is known in the art, and would have also been an obvious expedient to provide to the Ridgeway apparatus.

With regard to the rejection over Smith applicants arguments have also been considered. The examiner can accept the drawings proffered in the Declaration for what they show. However, the examiner does not agree that somehow anything more than what is in those drawings has been shown. The examiner does not agree that the drawings in the Declaration “corroborate” Fig 8 of the subject application, as argued by applicant. Figure 8 shows much more than is in those drawings (It is noted that since independent claim 74 has been changed so that the nesting feature has been deleted therefrom, the applicant may also agree with the examiner that the nesting feature is simply not shown in the Declaration drawings, even while applicant continues to argue that those same drawings “corroborate” Fig 8 of the instant application). As a group the claims, including claims 74-86 recite many features that are not seen in the Declaration drawings. For example, and in addition to the nesting feature, note the features of claims 75 and 76. Thus the Declaration is not effective to show that all of the elements of the claimed invention predate the Smith reference. It may also be noted that in any event, Smith is not required for a rejection of a claim having the scope of claim 37.

8. Claims 36, 38-41 and 45 are allowed.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is

(571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./
Primary Examiner, Art Unit 3728.